

MIDAMERICAN ENERGY COMMENTS – PART 410

MidAmerican Energy appreciates the continuing efforts of the Office of Retail Market Development which has provided the opportunity for all parties to comment and question the original “Straw Man” proposal and the subsequent draft rules.

MidAmerican’s comments are incorporated below. Absence of a comment does not indicate lack of interest by MidAmerican. Additionally, MidAmerican reserves the right to revise or raise additional questions after further discussions with the working group.

Staff’s proposal is to add these new requirements to the existing [Code Part 410](#) (Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers). In addition to the proposed new Subparts F through I below, Staff proposes to add the following two definitions to Section 410.10:

“Retail Electric Supplier” or **“RES”** includes Alternative Retail Electric Suppliers and electric utilities serving retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

“Small commercial customer” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102]. A Retail Electric Supplier may remove the customer from designation as a “small commercial customer” if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Section creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer’s status as a small commercial customer as that term is defined herein. Nothing in this Section relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or

others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

SUBPART F: MARKETING PRACTICES

Section 410.500 Application of Subpart F

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions:

Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers serving or seeking to serve any customer class.

Section 410.510 In-Person Marketing

a) Sales agents who contact customers in person at a location other than the RES's place of business for the purpose of selling any product or service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

- 1) The sales agent's full name in reasonable size type face;
- 2) A photograph of the sales agent;
- 3) The trade name and logo of the RES they are representing.

b) If a customer elects to enroll with the RES, the sales agent shall read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.

c) If a fixed bill product is being offered, the sales agent shall explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

d) If a customer enrolls by signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

e) If a customer's enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.

f) If the customer's enrollment is authorized on-line, the requirements of Section 410.550 shall apply.

g) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

h) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

i) A statement that if the customer is currently with a RES, the customer should

Formatted: Indent: Left: 0.23"

consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

Section 410.520 Telemarketing

a) In addition to complying with the Telephone Solicitations Act [815 ILCS 15], RES sales agents who contact customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;

b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand, and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

c) If a customer elects to enroll with the RES, the sales agent must read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements Section 410.730.

d) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable

e) If a fixed bill product is being offered, the sales agent must explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

f) If third party verification is used to authorize a customer's enrollment, the third-party verifier must require the customer to verbally acknowledge that he or she

Deleted: d

Deleted: e

understands the uniform disclosure statement.

g) The written disclosure statement and sales contract must be mailed to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

Deleted: f

h) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

Deleted: g

i) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

Section 410.530 In-bound Enrollment Calls

In the event a customer initiates a call to a RES in order to enroll for service, the RES must:

- 1) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- 2) Read to the customer all the items included in the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.
- 3) Require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.
- 4) Mail the written disclosure statement and sales contract to the customer within 3 business days of the utility confirmation of accepted enrollment.

5) Inform the customer that if the customer is currently with a RES, the

Formatted: Indent: Left: 1"

customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

Section 410.540 Direct Mail

- a) Each RES that contacts customers for enrollment by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.
- b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 410.730. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and is not required to be mailed back to the RES.
- c) If a written Letter of Agency is being used to verify any customer change, it shall contain a statement that the customer has read and understood the terms and conditions contained in the Uniform Disclosure Statement.
- d) If third party verification is used to obtain the customer's authorization for enrollment, the third party verifier must comply with 815 ILCS 15 (Telephone Solicitations Act) and require the customer to verbally acknowledge that he or she understands the uniform disclosure statement for this product.
- e) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

Deleted: subscriber charge

f) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

g) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

Formatted: Bullets and Numbering

Section 410.550 Online Marketing

- a) Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code, utility service territory, and/or type of service being sought (residential or commercial).
- b) The Uniform Disclosure Statement must be printable in no more than a two-page format and shall be available for downloading by the customer.
- c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

d) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable

Formatted: Bullets and Numbering

e) The RES shall require the following customer information in an electronic authorization form:

Deleted: d

- 1) The customer's name;
- 2) Confirmation that the person completing the form wants to make the supplier change;
- 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- 4) The service address affected by the supplier switch;
- 5) The utility account number;

- 6) The billing address if different from service address; and
- 7) The customer's electronic mail address.

i The Internet enrollment website of the RES shall, at a minimum, include:

Deleted: d

- 1) All items within the Uniform Disclosure Statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730;
- 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
- 3) A statement that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;
- 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
- 5) An e-mail address where the customer can express his or her decision to rescind the sales contract.

Deleted: other than the . utility

Section 410.560 Training of sales agents

- a) All sales agents engaged in sales activity in Illinois (whether directly employed by the RES or otherwise exclusively selling the RES's service) shall be knowledgeable of the requirements contained in Subparts F through I herein and other relevant requirements contained in the Public Utilities Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Code that pertain to the marketing and sales of electric supply service.
- b) Each sales agent should be familiar with the specific attributes of the RES's products and services for which the agent has been hired to sell, including the

Deleted: All

Deleted: s

Comment [arm1]: I don't think any party expects the residential sales agent to possess the detailed engineering knowledge required to be familiar with the large industrial products, or vice versa. Anne McGlynn

rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

- c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.
- d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's "Do Not Market List", which the RES shall obtain at least monthly on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the RES shall obtain the list on the next business day following the 15th calendar day of that month. The "Do Not Market List" maintained by the electric utility shall contain the customer's name, address, and phone number(s).

Section 410.570 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days after a request is made by the Commission or Commission Staff.
- b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile.

SUBPART G: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC RENEWAL OF CONTRACT

Section 410.600 Application of Subpart G

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

Section 410.610 Rescission of sales contract

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

Section 410.620 Deposits

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

Section 410.630 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early

termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES.

Section 410.640 Contract Renewal

a) Non-Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least 30 days prior to the date of contract expiration but no more than 60 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"
- 2) The date the existing contract will expire;
- 3) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to enter into a new contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable;

4) If the RES is offering a contract renewal, the disclosure of the terms and conditions of the renewal offer maybe combined with the mailing of the contract expiration notice;

5) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin;

6) Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable.

b) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 30 days prior to the end of the initial contract term but no more than 60 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:

1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Renewal Notice;"

2) The date service under the new term will begin;

3) A statement in bold lettering no smaller than 12 point font that the contract will automatically renew unless the customer cancels it including the information needed to cancel;

4) If the new contract includes a termination fee, a statement of the date by which the customer must notify the RES of their rejection of the new contract term to avoid incurring a termination fee under the new contract term;

5) Clearly disclose the contract terms including a full description of any renewal offers available to the customer;

6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable.

Deleted: term

Deleted: that

Deleted: has from the date of the contract renewal notice through the end of the existing contract term to

Section 410.650 Assigning customers to a different RES

MidAmerican believes this section should apply to retail electric suppliers serving or seeking to serve any customer class.

If a RES is exiting the Illinois retail electric market, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement to a different RES unless:

1) The utility is notified 60 days in advance of the reassignment;

2) The new supplier has been certified as a RES to serve the class of customers being reassigned;

Deleted: is

3) The new RES is registered in the utility's service territory.

- 2) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service;
- 3) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- 4) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- 5) Within thirty (30) days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

Comment [arm2]: This section may have been written to cover the certification and registration requirements added above, but MidAmerican prefers such requirements be spelled out separately. Anne McGlynn

SUBPART H: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 410. 700 Application of Subpart H

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers .

Section 410.710 Required RES Information

- a) The RES shall provide the following:
 - 1) A copy of its bill formats (if it bills customers directly rather than using utility consolidated billing);
 - 2) Standard customer contract;

- 3) Customer complaint and resolution procedures;
 - 4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.
- b) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed toward the understanding of any reasonable adult.
- c) The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

Deleted: in favor of the customer

Section 410.720 Dispute Resolution

a) Complaint Handling

- 1) ~~All customers~~ have the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

Deleted: residential or small commercial

Deleted: has

Comment [arm3]: The original sentence removes an important consumer protection. Anne McGlynn

b) Complaints to RES

- 1) A customer or applicant for service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES does not respond to the customer's complaint in writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request. A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

c) Complaints to the Commission.

- 1) **Informal complaints.**

- A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Illinois Commerce Commission's Consumer Services Division and provide the following contact information: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: www.icc.illinois.gov, TTY (800) 858-9277, fax (217) 524-6859. Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- i) The customer's name, billing and service addresses, and telephone number;
- ii) The name of the RES;

- iii) The customer account number;
- iv) An explanation of the facts relevant to the complaint;
- v) The complainant's requested resolution; and
- vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

- B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a call between the customer, the Consumer Services staff and the supplier. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. Three-way calling may not be available or Consumer Services staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES. In the case of utility-consolidated billing and the utility purchasing the supplier's receivables, the RES shall notify the utility of any informal complaint received and the utility shall cancel disputed supplier charges and remove those charges from the customer's bill.
- C) The RES shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.

- D) The Commission shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.
- E) While an informal complaint process is pending:
 - 1) The RES (or the electric utility in the case of utility-consolidated billing) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.
 - 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of utility-consolidated billing) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.
- F) The RES shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

2) Formal complaints.

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission.

3) Disclosure of RESs' level of customer complaints

The Commission shall, on a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its World Wide Web site. The summary shall be in an easy-to-read and user friendly format. The Commission shall develop a ranking system of individual RES' complaints ratios in comparison with a RES-wide complaint ratio, as well as the associated ranking methodology.

Section 410.730 Uniform Disclosure Requirements

- a) In addition to providing a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length:
 - 1) The legal name of the RES;
 - 2) The RES's business address;
 - 3) The RES's toll free telephone number for billing questions, disputes, and complaints;
 - 4) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
 - 5) The length of the agreement including the automatic renewal clause, if any;
 - 6) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
 - 7) For a RES using Dual Billing or SBO, any possible requirement to pay a deposit, the estimated amount of the deposit or basis on which it

is calculated, when the deposit will be returned, and if the deposit will accrue interest;

8) Any fees to the applicant for switching to the RES;

9) The name of the electric service offering for which the customer is being solicited;

10) A statement that the customer may rescind the agreement within ten calendar days of the utility processing the enrollment request by calling either the RES or the utility and provide both phone numbers;

11) A statement that the RES is an independent seller of electricity and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

12) A statement that the utility remains the delivery service provider responsible for delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies;

Deleted: will continue to deliver the electricity

Comment [arm4]: To avoid misinterpretation of the previous language which might imply that the utility will continue to deliver energy if the customer fails to pay the supplier or meet other contract obligations.

13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;

14) If savings are guaranteed, or guaranteed under only certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and

15) For products where a customer's charges are a fixed amount per billing period regardless of the market price for electricity or the customer's electricity consumption during the billing period, the billing period covered. In addition, it must state that the fixed bill amount is for supply charges only and does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

SUBPART I: ENFORCEMENT

Section 410.800 Application of Subpart I

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve any customer class.

Section 410.810 Enforcement provisions

a) If the Commission Staff or other party believes that a RES has repeatedly violated the requirements contained in Sections 410.500 - 410.730, the following additional expedited procedures may be used to enforce these requirements. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

1) Reasonable discovery specific to the issue of the complaint may commence upon filing of the complaint. Requests for discovery must be served in hand and responses to discovery must be provided in hand to the requester within 14 days after a request for discovery is made.

2) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand upon the complainant within 7 days after the date on which the complaint is filed.

3) A pre-hearing conference shall be held within 14 days after the date on which the complaint is filed.

4) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by a hearing examiner or by an arbitrator. Parties shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the hearing examiner or arbitrator. The hearing examiner or arbitrator shall issue a written decision within 60 days after

the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a repeated violation is found, directions and a deadline for correction of the violation.

5) Any party may file a petition requesting the Commission to review the decision of the hearing examiner or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the hearing examiner or arbitrator, the Commission shall decide to adopt the decision of the hearing examiner or arbitrator or shall issue its own final order.

6) The complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

7) In determining the appropriate consequence for a violation, the Commission may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the RES's history of previous violations.

8) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on a RES's opportunity to sell electricity to retail customers:

- A) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;
- B) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;
- C) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;
- D) Reimbursements to customers who did not receive savings promised in the RES's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the RES's marketing materials or to customers who incurred costs as a result of the RES's failure to comply with the requirements set forth above;
- E) Release of customers from sales contracts without imposition of early termination fees;
- F) Revocation of a RES's eligibility to operate in Illinois;
- G) Any other measures that the Commission may deem appropriate.
- H) Consequences imposed pursuant to this paragraph shall continue to apply until the RES's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.

b) A party shall not bring or defend a proceeding brought under this Subpart or assert or dispute an issue in a proceeding brought under this Subpart, unless there is a non-frivolous basis for doing so. By presenting a pleading, written motion, or other paper in complaint or defense of the actions or inactions of a party under this Subpart, a

party is certifying to the Commission that to the best of that party's knowledge, information, and belief, formed after a reasonable inquiry of the subject matter of the complaint or defense, that the complaint or defense is well grounded in law and fact, and under the circumstances:

- 1) it is not being presented to harass the other party, cause unnecessary delay in the provision of competitive electric supply services to customers, or create needless increases in the cost of litigation; and

- 2) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery as defined herein.

c) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (b) has been violated, the Commission shall impose appropriate sanctions upon the party or parties that have violated subsection (b) or are responsible for the violation. The sanctions shall be not more than \$30,000, plus the amount of expenses accrued by the commission for conducting the hearing. Payment of sanctions imposed under this section shall be made to the Common School Fund within 30 days of imposition of such sanctions.

d) In the event of any conflict between these Sections and the requirements for RESs provided in electric utility tariffs on file with the Commission as of the effective date of this Part, this Section shall control.